

PT 98-65

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE CATHOLIC
BISHOP OF CHICAGO
(ARCHDIOCESE OF CHICAGO),
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No. 94-16-0138

**Real Estate Tax Exemption for
1994 Assessment Year**

P.I.N: 20-08-429-013

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 20-08-429-013 (hereinafter the "subject property" or the "subject parcel") qualifies for exemption from 1994 real estate taxes under 35 ILCS 200/15-40,¹ wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

The controversy arises as follows:

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

The Catholic Bishop of Chicago (hereinafter the "applicant" or the "Archdiocese") filed a Real Estate Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on October 26, 1994. The Board reviewed applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted. (Dept. Group Ex. No. 1, Doc. B).

The Department rejected this recommendation by issuing a determination dated January 24, 1997. Said determination found that applicant did not provide sufficient supporting documentation. (Dept. Group Ex. No. 2, Doc. A). Applicant then filed a timely request for hearing on April 23, 1996 (Dept. Group Ex. No. 3, Doc. A) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be exempt from 1994 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the applicant did not provide sufficient supporting documentation, are established by the admission into evidence of Dept. Group Ex. No. 2, Doc. A.
2. Applicant is a body politic and corporation sole [sic] created by a corporate charter issued by the General Assembly on February 20, 1801. Applicant Ex. No. 1-A.
3. In substance, the corporate charter provides for creation of a corporation sole that, *inter alia*, is vested with authority to acquire, convey and mortgage property, or hold same in trust, in the name of the Catholic Bishop of Chicago and his successors in interest, provided however, that any property held in trust must be

used for no end other than the charitable, religious, literary or burial ground purposes set forth in the Act. *Id.*

4. The subject property consists of a 36' x 120' lot located at 905 West 54th Place, Chicago, IL 60609. The lot is situated immediately adjacent to St. Basil/Visitation Grammar School, a parochial school owned and operated by the Archdiocese. Dept. Group Ex. No. 1, Docs. B, C; Applicant Ex. No. 3-A, 3-B; Tr. pp. 21, 24, 25.
5. St. Basil/Visitation Grammar School, which serves approximately 400 students, is situated on real estate identified by Cook County Parcel Index Numbers 20-08-429-014, 20-08-429-027 and 20-08-429-028. All of these parcels were tax-exempt throughout the 1994 assessment year. Applicant Ex. No. 2; Tr. p. 21.
6. The subject property was owned by the City of Chicago (hereinafter the "City"), and therefore exempt from real estate taxation, as of January 1, 1994. Dept. Group Ex. No. 1, Doc. A-2; Applicant Ex. No. 1; Tr. pp. 15, 29.
7. The City of Chicago maintained its ownership interest in the subject property until October 17, 1994. On that date, it executed a quitclaim deed that conveyed ownership of the subject property to the Archdiocese. Applicant Ex. No. 1; Tr. p. 15.
8. The deed expressly made this conveyance subject to the following use restrictions: (1) the subject property was to be used as a playground/recreational area within twelve months from the date of the deed; (2) the subject property was to be used as a playground/recreational area for a period of seven years from the date of the deed; (3) in the event the aforementioned conditions were not satisfied,

the City shall be authorized to re-enter the subject property and revest title in itself; and (4) this right of reverter and re-entry shall terminate five years from the date of the deed. *Id.*

9. The subject property was entirely vacant and unimproved when applicant purchased it. The Archdiocese paved the entire lot with blacktop and installed a small (25' x 15') portable classroom shortly after taking possession. Tr. pp. 15-17.
10. The portable classroom was in place as of November 26, 1994. It was used to hold computer classes that were part of the curriculum taught to students attending St. Basil/Visitation Grammar School. Dept. Group Ex. No. 1, Doc. A-1; Tr. pp. 17, 25.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that applicant did not provide sufficient documentation to sustain its exemption complaint should be modified to reflect that the subject parcel be exempt from real estate taxation for 100% of the 1994 assessment year. However, said exemption: (1) shall benefit the City of Chicago during that 79% of the 1994 assessment year that ran from January 1, 1994 until October 16, 1994 but (2) shall benefit the applicant, Catholic Bishop of Chicago, during that 21% of the 1994 assessment year that began October 17, 1994 and ended December 31, 1994. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts

and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-40, wherein "[a]ll property *used* exclusively for religious purposes" is exempted from real estate taxation. (Emphasis added).

Before addressing the merits of applicant's exemption claim, it must be noted that the subject property was exempt prior to October 17, 1994, the date the Archdiocese assumed title. However, that exemption inured to the benefit of the City of Chicago. Thus, applicant's own exemption is technically limited to that 21% of the 1994 assessment year that took place on or after October 17, 1994 under 35 **ILCS** 200/9-185.²

2. That provision states that:

With respect to the merits of the Archdiocese's claim, it should be noted that prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized language demonstrates is still in effect) eliminated that requirement in cases that do not involve parsonages. The test of exemption then became (and, with the exemption of parsonages, still remains) use and not ownership. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American Nat'l Bank and Trust Co. v. Dept. of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993).

In this case, the Department's denial was based solely on applicant's failure to provide sufficient supporting documentation. Applicant has cured this failure of proof by presenting evidence establishing that it blacktopped the previously vacant and unimproved subject property shortly after assuming ownership thereof. By so doing, applicant actively adapted said property for the playground uses mandated by the quitclaim deed (Applicant Ex. No. 1).

These playground uses, if actual and exclusive during 1994, would have qualified as exempt because they would have been "reasonably necessary" to further appropriate activity at

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

the immediately adjacent, and already exempt, St. Basil/Visitation Grammar School. MacMurray College v. Wright, 38 Ill.2d 272 (1967). Thus, any steps that applicant actually took to adopt and develop the subject property for this use must likewise be considered exempt. Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987).

A similar rationale applies to the mobile classroom. This facility had a more direct connection with St. Basil/Visitation Grammar School because it was actually used to conduct computer classes that were part of the curriculum for students attending that parochial institution. As such, any instruction taking place therein was "reasonably necessary" to fulfill that curriculum. To the extent that such instruction, and other activity, establishes that applicant actually used the subject property exclusively for purposes that were reasonably necessary to accomplish its own exempt ends as of October 17, 1994, I recommend that the Department's determination to the contrary be modified as described above.

WHEREFORE, for all the aforestated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 20-08-429-013 be exempt from real estate taxes for the entire 1994 assessment year but that said exemption should: (1) benefit the City of Chicago during that 79% of the 1994 assessment year that ran from January 1, 1994 until

October 16, 1994 and (2) benefit the applicant, Catholic Bishop of Chicago, during that 21% of the 1994 assessment year that began October 17, 1994 and ended December 31, 1994.

November 23, 1998

Date

Alan I. Marcus
Administrative Law Judge